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BY E-FILE AND HAND DELIVERY

The Honorable Christopher J. Burke
United States District Court of Delaware
844 North King Street
Wilmington, DE 19801

Re: *Sysmex Corporation and Sysmex America, Inc. v. Beckman Coulter, Inc.*
C.A. No.: 19-1642-RGA-CJB

Dear Judge Burke:

I write on behalf of my client, Beckman Coulter, Inc. (“BCI”) in response to Sysmex’s letter last evening. BCI disagrees with Sysmex’s representations regarding the ripeness of the issues on which it seeks the Court’s guidance. BCI requested a meet and confer pursuant to Your Honor’s directive to counsel at the August 3, 2021 hearing during which Your Honor graciously permitted Sysmex to serve a supplemental expert report of Dr. Madisetti. (Tr. at 43:8-16.) Counsel participated in an hour long meet and confer a week ago – Tuesday, August 17 – that included not only the items on which BCI now requests a hearing, *but also the very simple request that Sysmex provide a date certain for service of the supplemental report.* Sysmex’s counsel refused, repeating only a noncommittal response that the report would be served “hopefully this week, and if not, then probably next week.” Sysmex’s counsel refused even to give a “no later than” date for service of the supplemental report. During the meet and confer, BCI also noted that the supplemental report would likely necessitate that Sysmex immediately provide supplemental interrogatory responses, inspection of source code, a deposition of Dr. Madisetti, and a responsive report from BCI’s expert. Sysmex refused to discuss even the framework and elements of BCI’s requested follow up discovery, at the very same time that Sysmex evaded committing to any date to serve the supplemental report. *Only after BCI circulated its discovery dispute letter on Friday, August 20, 2021 asking Your Honor to order a date certain for the Madisetti supplemental report and provide guidance on the scope and timing of related discovery, Sysmex served a fully completed supplemental report.*

On the issue of narrowing claims, Sysmex is already required to narrow to no more than 10 asserted claims per patent, but only once the claim construction order is finalized. (D.I. 40.) During the August 17 meet and confer, BCI sought confirmation that Sysmex would voluntarily narrow to a number that the Court would entertain for a jury trial in advance of the final claim construction order. BCI has maintained a reasonable number of invalidity defenses from the outset, and is already within the Court ordered limits of prior art invalidity positions (20 total prior art references, 70 prior art invalidity grounds). As for the invalidity of claims 7-15 of the ‘351 patent, BCI proposed withdrawing its challenge to the validity of these claims both here and in the IPR, but Sysmex was unwilling to provide a covenant not to sue on these and other implicated claims.

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By its conduct and strategy in connection with BCI's efforts to bring disputes to the Court's attention, Sysmex simultaneously seeks unfairly to delay judicial guidance on BCI's issues, uses the delay it created to oppose BCI's requested relief, and all the while admonishes Your Honor to prioritize only Sysmex's issue. BCI believes that it is Sysmex's conduct and strategy which violate the spirit and letter of the meet and confer requirement and the Court's August 3, 2021 Order.

The issues BCI has identified are ripe and the Scheduling Order deadlines are imminent, including summary judgment briefing due this Friday, August 27, 2021. Accordingly, BCI respectfully requests a discovery hearing on its issues and that issues be briefed in that context, not evaded by a letter writing campaign.

Respectfully,

/s/ Melanie K. Sharp

Melanie K. Sharp (No. 2501)

MKS:mg

cc: Counsel of Record, Kelly F. Farnan, Esquire (by e-mail)

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